The Attorney General of Texas

April 13, 1978

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Hon. Jerry L. Harris
City Attorney
City of Austin
Austin, Texas 78767

Open Records Decision No. 188

Re: Whether a list of applicants for appointment as municipal court judge is public under the Open Records Act.

Dear Mr. Harris:

You have received a citizen's request that he be permitted to examine documents in possession of the city which would reflect the names of applicants for the position of municipal court judge of the City of Austin. You have determined that such documents are excepted from required disclosure under the Texas Open Records Act and have requested our decision under section 7(a) of that statute. V.T.C.S. art. 6252-17a.

You first contend that the Act is inapplicable to these documents by virtue of section 2(G) which provides that the judiciary is not included within the definition of "governmental body." While the documents reflect applicants for appointment to a judicial position, the appointments will be made by the city council. We believe the documents are appropriately classified as records of the city council rather than as records of the judiciary.

You also suggest that the information is excepted from disclosure by section 3(a)(2) which provides an exception for

> information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; . . . .

Even if these documents constitute information in personnel files, we do not believe their disclosure could be categorized as involving a clearly unwarranted invasion of personal privacy. A person who seeks governmental office holds himself up to close public scrutiny. Gertz v. Welch, 418 U.S. 323, 344

(1974). When a person seeks a public office he places his character and his qualifications for the office in issue. Fitzjarrald v. Panhandle Publishing Company, 228 S.W.2d 499, 503 (Tex. 1950); See Garrison v. Louisiana, 379 U.S. 64, 77 (1964); Foster v. Laredo Newspapers, Inc., 541 S.W.2d 809, 814 (Tex. 1976). In 1896 the Texas Court of Civil Appeals indicated that public comment on the qualifications of a candidate for appointive office was not privileged, George Knapp & Co. v. Campbell, 36 S.W. 765 (Tex. Civ. App. 1896, no writ); however, in light of more recent decisions, we do not believe that the Campbell case is still a correct statement of the law. See Time v. Pape, 401 U.S. 279 (1971); St. Amant v. Thompson, 390 U.S. 727 (1968); New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Grzelak v. Calumet Publishing Co., Inc., 543 F.2d 579 (2nd Cir. 1975).

We believe the qualifications of appointed judges are an appropriate topic for public debate. Accordingly we do not believe that disclosure of the document revealing the names of individuals who are seeking appointment to judicial positions can be said to constitute a clearly unwarranted invasion of personal privacy. It is our determination that the names of the applicants are public and should be revealed.

Very truly yours,

John L. Hill

JOHN L. HILL
Attorney General of Texas

APPROVED:

DAVID M. KENDALL, First Assistant

C. ROBERT HEATH, Chairman
Opinion Committee

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